

REMARKS

Claims 1-16 are pending in the present application. In the foregoing amendments, claims 1 and 9 have been amended. Support for these amendments can be found in the specification and claims of the application as filed. No new matter has been added by these amendments.

Applicants respectfully request entry of the foregoing amendments and reconsideration of the application in light of the amendments above and the remarks below.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action mailed August 2, 2007 (hereinafter, “Office Action”), claims 1, 2, 9 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,914,950 to Tiedemann, Jr. et al. (hereinafter, “Tiedemann”) in view of U.S. Patent No. 6,999,425 to Cheng et al. (hereinafter, “Cheng”). Applicants respectfully traverse.

The factual inquiries that are relevant in the determination of obviousness are determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claims in issue, resolving the level of ordinary skill in the art, and evaluating evidence of secondary consideration. KSR Int’l Co. v. Teleflex Inc., 550 U.S. ___, 2007 U.S. LEXIS 4745, at **4-5 (2007) (citing Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966)). To establish a *prima facie* case of obviousness, the prior art references “must teach or suggest all the claim limitations.” M.P.E.P. § 2142. Moreover, the analysis in support of an obviousness rejection “should be made explicit.” KSR, 2007 U.S. LEXIS 4745, at **37. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Id. (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Applicants respectfully submit that the claims at issue are patentably distinct from the cited references. The cited references do not teach or suggest all of the subject matter in these claims.

Independent claim 1 has been amended to recite “wherein the number of hypotheses is reduced by limiting the combinations of available data rates and the number of subpackets based on the historical transmission information.” Support for this amendment may be found in

Applicants' specification, for example, page 35, paragraph [00116]. Tiedemann and Cheng, alone or in combination, do not teach or suggest this subject matter.

The Office Action admits that "Tiedemann, Jr. et al. fails to teach the method comprising of using historical transmission to reduce the set of hypothesis." (Office Action, page 3.) The addition of Cheng does not overcome the deficiencies of Tiedemann.

Instead Cheng states:

The algorithm gives a reverse link load value that is a moving average of the reverse link load from a time frame that goes from the distant past up to the present. Each new calculation by the algorithm updates the most recently calculated reverse link load value by adding an increment load value to the previously obtained value and is dependent upon the number of frames in a window. The algorithm here disclosed does not ignore the previously calculated load value when computing the new load value. Actually, each new calculation by the algorithm builds on the previously calculated load value and modifies the previously obtained load value to include the most recently obtained load value.

Cheng, col. 4, lines 38-49.

Using each new calculation of the algorithm to update the most recent calculated reverse link load value does not teach or suggest reducing "the number of hypotheses . . . by limiting the combinations of available data rates and the number of subpackets based on the historical transmission information." Also, "not ignor[ing] the previously calculated load value when computing the new load value" does not teach or suggest "the number of hypotheses is reduced by limiting the combinations of available data rates and the number of subpackets based on the historical transmission information."

Cheng further states:

The algorithm here disclosed does not ignore the previously calculated load value when computing the new load value. Actually, each new calculation by the algorithm builds on the previously calculated load value and modifies the previously obtained load value to include the most recently obtained load value. A window that includes a few frames will have less of an effect on the new load value than a window that has more frames. Abrupt changes in the value of the Rate Limit value which will occur if the window contains two frames can be avoided by including more frames, for example 20 or 50 frames, in the window.

Cheng, col. 5, lines 44-55.

The Office Action points to this passage of Cheng to support the assertion that “[f]rom the load value that is obtained will then reduce the set of rate limit values.” (Office Action, page 5.) However, “[a] window that includes a few frames” does not teach or suggest “the number of hypotheses is reduced by limiting the combinations of available data rates and the number of subpackets based on the historical transmission information.” Similarly, “[a]brupt changes in the value of the Rate Limit value” does not teach or suggest “the number of hypotheses is reduced by limiting the combinations of available data rates and the number of subpackets based on the historical transmission information.” In fact, the above-cited passage of Cheng includes no teaching or suggestion of reducing “the number of hypotheses . . . by limiting the combinations of available data rates and the number of subpackets based on the historical transmission information.”

The Office Action also states “[t]hrough Cheng et al. example, described in column 6, there are load percentages and data rates associated with them and by using the algorithm Cheng et al. will find a load percentage that is optimal for performance by limiting the rate to meet the load percentage.” (Office Action, page 3.) However, the Office Action does not point to, and Applicants cannot find, any teaching or suggestion in the example of Cheng described in column 6 of reducing “the number of hypotheses . . . by limiting the combinations of available data rates and the number of subpackets based on the historical transmission information.”

Cheng states “[f]or loads of 10%, 50%, 60%, 70% and 100%, the threshold values are 153.6 kbps, 76.8 kbps, 38.9 kbps, 19.2 kbps and 9.6 kbps, respectively.” (Cheng, col. 6, lines 46-49.) Threshold values in Cheng that simply decrease does not teach or suggest that such a decrease was caused by “limiting the combinations of available data rates and the number of subpackets based on the historical transmission information.” Instead, the threshold values of Cheng decrease as the load increases. An increase of the load (i.e. 10%, 50%, 60%, 70% and 100%) does not teach or suggest “limiting the combinations of available data rates and the number of subpackets based on the historical transmission information.”

In view of the foregoing, Applicants respectfully submit that claim 1 is patentably distinct from the cited references. Accordingly, Applicants respectfully request that the rejection of claim 1 be withdrawn.

Claim 2 depends directly from claim 1. Accordingly, Applicants respectfully request that the rejection of claim 2 be withdrawn.

Independent claim 9 has been amended to include subject matter that is similar to the subject matter amended to claim 1. As such, Applicants submit that claim 9 is patentably distinct from the cited references for at least the same reasons as those presented above in connection with claim 1. Accordingly, Applicants respectfully request that the rejection of claim 9 be withdrawn.

Claim 10 depends directly from claim 9. Accordingly, Applicants respectfully request that the rejection of claim 10 be withdrawn.

Allowable Subject Matter

The Office Action states that claims 3-8 and 11-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph. (See Office Action, page 4.) However, the Office Action does not point to a rejection of claims 3-8 and 11-16 under 35 U.S.C. 112, 2nd paragraph.

In addition, the Office Action states that claims 3-8 and 11-16 would be allowable if rewritten to include all of the subject matter of the base claim and any intervening claims. (*Id.*) Claims 3-8 and 11-16 have not been rewritten at this time to include all of the subject matter of their respective base claim and any intervening claims. As provided above, Applicants respectfully assert that the respective base claims of claims 3-8 and 11-16 are patentable over the cited references.

Claims 3-8 depend either directly or indirectly from claim 1. As such, Applicants submit that claims 3-8 are patentable over the cited references for at least the same reasons as those provided above in connection with claim 1.

Claims 11-16 depend either directly or indirectly from claim 9. As such, Applicants submit that claims 11-16 are patentable over the cited references for at least the same reasons as those provided above in connection with claim 9.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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